

Owensby, et al. vs. City of Cincinnati  
November 6, 2003

DAVID WILLIAM HUNTER, JR.

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO :

WESTERN DIVISION

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ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, : Case No. 01-CV-769  
vs. : (Judge S. A. Spiegel)  
 :  
CITY OF CINCINNATI, : VOLUME I  
et al., :  
 :  
Defendants. :  
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Videotaped deposition of DAVID WILLIAM

HUNTER JR., a witness herein, called by the  
plaintiffs for cross-examination, pursuant to the  
Federal Rules of Civil Procedure, taken before me,  
Wendy Davies Welsh, a Registered Diplomate Reporter  
and Notary Public in and for the State of Ohio, at  
the offices of Helmer, Martins & Morgan Co. LPA,  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
Cincinnati, Ohio, on Thursday, November 6, 2003, at  
2:43 p.m.

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<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. 4 Frederick M. Morgan Jr., Esq. Helmer, Martins &amp; Morgan Co. LPA 5 Suite 1900, Fourth &amp; Walnut Centre 105 East Fourth Street 6 Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. 8 The Helbling Law Firm, L.L.C. 3672 Springdale Road 9 Cincinnati, Ohio 45251 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, 11 Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq.. 13 Rendigs, Fry, Kiely &amp; Dennis 900 Fourth &amp; Vine Tower 14 One West Fourth Street Cincinnati, Ohio 45202-3688 15 Phone: (513) 381-9200</p> <p>16 On behalf of the Defendants City of Cincinnati, 17 Darren Sellers, Jason Hodge:</p> <p>18 Geri Hernandez Geiler, Esq. Assistant City Solicitor and 19 Julie F. Bissinger, Esq. Chief Counsel 20 Department of Law Room 214, City Hall 21 801 Plum Street Cincinnati, Ohio 45202 22 Phone: (513) 352-3346</p> <p>23</p> <p>24</p>	<p>1 Federal Rules of Civil Procedure, may be taken at</p> <p>2 this time by the notary; that said deposition may be</p> <p>3 reduced to writing in stenotype by the notary, whose</p> <p>4 notes may then be transcribed out of the presence of</p> <p>5 the witness; and that proof of the official</p> <p>6 character and qualifications of the notary is</p> <p>7 expressly waived.</p> <p>8</p> <p>9</p> <p>10 I N D E X</p> <p>11 Examination by: Page</p> <p>12 Mr. Martins . . . . . 5</p> <p>13</p> <p>14</p> <p>15 E X H I B I T S</p> <p>16 Page</p> <p>17</p> <p>18 Deposition Exhibit 6A . . . . . 89</p> <p>Deposition Exhibit 54 . . . . . 29</p> <p>19 Deposition Exhibit 55 . . . . . 43</p> <p>Deposition Exhibit 56 . . . . . 62</p> <p>20 Deposition Exhibit 57 . . . . . 64</p> <p>Deposition Exhibit 58 . . . . . 67</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellman and 3 Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus &amp; Marks, LLC 5 915 Cincinnati Club Building 30 Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 On behalf of the David William Hunter Jr.:</p> <p>8 Jay Clark, Esq. 114 East 8th Street 9 Suite 400 Cincinnati, Ohio 45202 10 Phone (513) 587-2887</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk</p> <p>14 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>15 Mr. Roger Owensby</p> <p>16 Mrs. Brenda Owensby</p> <p>17</p> <p>18</p> <p>19</p> <p>20 S T I P U L A T I O N S</p> <p>21 It is stipulated by and among counsel for the</p> <p>22 respective parties that the deposition of DAVID</p> <p>23 WILLIAM HUNTER JR., a witness herein, called by the</p> <p>24 plaintiffs for cross-examination, pursuant to the</p>	<p>1 VIDEOGRAPHER: Time is 2:43 p.m. The date</p> <p>2 is November the 6th. The year is 2003.</p> <p>3 If you'd please swear the witness, ma'am.</p> <p>4 DAVID WILLIAM HUNTER JR.</p> <p>5 being by me first duly cautioned and sworn, deposes</p> <p>6 and says as follows:</p> <p>7 VIDEOGRAPHER: We're on the record, Mr.</p> <p>8 Martins. This is videotape number 1, sir.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. MARTINS:</p> <p>11 Q. Sir, would you state for the record your</p> <p>12 full name, please.</p> <p>13 A. David William Hunter Jr.</p> <p>14 Q. And your age?</p> <p>15 A. 36.</p> <p>16 Q. Date of birth?</p> <p>17 A. 5/20/67.</p> <p>18 Q. What is your height?</p> <p>19 A. 5' 7."</p> <p>20 Q. And on November 7th of 2000 what was your</p> <p>21 weight?</p> <p>22 A. Approximately 175.</p> <p>23 Q. Have you ever had your deposition taken</p> <p>24 before?</p>

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1 recollection of seeing Roger Owensby before  
2 September of 2000?  
3 A. N--  
4 Q. Correct?  
5 A. No. As far as what I just said.  
6 Q. Right.  
7 A. I know it's kind of confusing, but I'm  
8 trying to answer as truthful as possible.  
9 Q. Right. You have no recollection of seeing  
10 Roger Owensby before September of 2000?  
11 A. Right. Okay.  
12 Q. Okay. Walk me through what happened in  
13 September of 2000.  
14 A. Me and Officer Jorg were working  
15 plainclothes, old clothes, and we were doing an  
16 investigation in front of the Sam's Drive Thru. It  
17 was three to four individuals that we observed  
18 making drug transactions. We wanted to stop those  
19 individuals.  
20 Officer Jorg stayed with -- with one or  
21 two of the individuals and then two of the  
22 individuals went across the street, across from  
23 Sam's Drive Thru, across -- that would be Seymour,  
24 in the direction of Huntington Meadows Apartment

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1 complex. So I responded across the street behind  
2 them.  
3 Another uniform car -- another uniform car  
4 met me across the street, and that officer was  
5 Officer Walker. I advised Officer Walker to go  
6 around, because I wanted him to flank the two guys  
7 we were trying to catch up to.  
8 Because I could pretty much walk up to  
9 them, because they probably wouldn't -- wouldn't  
10 have taken me as being a police officer, but Officer  
11 Walker was in uniform of the day.  
12 After we had that discussion, I started in  
13 one direction. Officer Walker started in another  
14 direction. That's when Mr. Owensby alerted the  
15 individuals that we were trying to catch up to to  
16 apprehend that the police were coming and that we  
17 were in the area. So they got away, because they  
18 had a jump on us anyway, because -- and they're  
19 already behind -- around the building.  
20 So I walked up to Mr. Owensby and I put my  
21 left hand on his shoulder. And I said, "What's up?"  
22 And he replied, "What's up?"  
23 And then I said, "You know, you can't be  
24 doing what you just did."

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1 And he said, "What's that?" Or something  
2 to that nature.  
3 I said, "You can't be telling people" --  
4 as I was saying this to him, I reached into my shirt  
5 with my other hand. I was wearing my badge on a  
6 chain around my neck. "You can't be telling --  
7 you -- you can't be warning people that the -- the  
8 police is here. That's -- and -- that's interfering  
9 with an investi"--  
10 As I was saying investigation or whatnot,  
11 I flipped my badge out and it dropped down dangling  
12 around my neck. When he saw my badge, he pushed me  
13 off him, and I grabbed the back --  
14 He had a hooded sweat shirt on. I grabbed  
15 the back of his sweat shirt, and he tugged and  
16 pulled and his sweat shirt ripped. And I was just  
17 basically standing there holding his sweat shirt,  
18 because he ripped right out of it.  
19 At that point I -- I actually drew my  
20 weapon. And I told him, "Don't move." You know,  
21 "Freeze." He -- he kind of faked to the left, to  
22 the right or whatever, and took off running. I had  
23 no intention of shooting. I -- I didn't have the  
24 authority to shoot him, and he probably knew that.

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1 That's why he probably took off running.  
2 I gave chase. We ran through Huntington  
3 Meadows, between the buildings, out onto Rhode  
4 Island, into the intersection of Rhode Island and  
5 Seymour.  
6 Right there at the traffic light is a  
7 crosswalk. There was a car stopped at a red light.  
8 I was chasing Mr. Owensby around the car. We  
9 actually went -- circled the car once or twice. And  
10 then he proceeded toward -- in the direction -- on  
11 Seymour in the direction of Reading Road down the  
12 sidewalk.  
13 At that point I was able to put my --  
14 secure my weapon and I went to Mace, my chemical  
15 spray. He was running down the sidewalk, and at  
16 some point he tripped and fell on his own. And I  
17 was trying to run up to him to Mace him, but I was  
18 running and spraying at the same time. So some of  
19 the chemical irritant sprayed back toward me.  
20 He was on the ground. He managed to make  
21 his way by using his hands and his feet, making his  
22 way back to his feet. He then ran in between some  
23 apartment buildings.  
24 I continued to chase him. He ran into one

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<p>1 A. Well --</p> <p>2 Q. Did you want to say something?</p> <p>3 A. It was not -- it was not a set -- like</p> <p>4 a -- like a -- just one building. It was like</p> <p>5 buildings. It was --</p> <p>6 Q. Okay.</p> <p>7 A. You know, it was -- it was like two or</p> <p>8 three like together, but you can go through the</p> <p>9 courtyard and then you can come around, and there's</p> <p>10 like a building here on the right (indicating).</p> <p>11 That's the way Curtis went, Officer Walker. And</p> <p>12 then I was going to cut through.</p> <p>13 Q. All right. At some point, then, you</p> <p>14 folk-- you and Officer Walker split up and you start</p> <p>15 to go your way and he goes his, right?</p> <p>16 A. Yes.</p> <p>17 Q. At that point someone says something to</p> <p>18 warn the two individuals; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. That's the next thing that happens?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And that person, if I'm</p> <p>23 understanding you correctly, was Mr. Owensby?</p> <p>24 A. Yes.</p>	<p>1 Q. Do you know if the individuals started</p> <p>2 running because of what Mr. Owensby said or because</p> <p>3 they saw a uniformed officer?</p> <p>4 A. Beca--</p> <p>5 MR. HARDIN: Objection.</p> <p>6 You may answer.</p> <p>7 A. Because of what Mr. Owensby said. Because</p> <p>8 when that happened, Officer Walker didn't have</p> <p>9 enough time to get around. So they -- they had --</p> <p>10 they had -- they -- they couldn't have possibly even</p> <p>11 seen him yet.</p> <p>12 Q. But as I understand it, Mr. Owensby was</p> <p>13 not one of the four individuals that you and Officer</p> <p>14 Jorg had observed conducting drug activity at the</p> <p>15 phone booth?</p> <p>16 A. That's correct.</p> <p>17 Q. He was just somebody that you happened</p> <p>18 upon as you were going around the building?</p> <p>19 A. Yes.</p> <p>20 Q. At that point, as I understand it, you</p> <p>21 walk up to Mr. Owensby and put your left hand on his</p> <p>22 shoulder?</p> <p>23 A. Yes.</p> <p>24 Q. What shoulder did you put it on?</p>
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<p>1 Q. Are you sure of that?</p> <p>2 A. Yes.</p> <p>3 Q. What is the best of your recollection of</p> <p>4 what Mr. Owensby said?</p> <p>5 A. It was, The boys or Five-oh.</p> <p>6 Q. Say that again.</p> <p>7 A. It was either, The boys or Five-oh.</p> <p>8 Q. And in response to what -- could you see</p> <p>9 the two individuals at the time Mr. Owensby said</p> <p>10 this?</p> <p>11 A. They would -- they were just -- as he said</p> <p>12 it, they were just leaving out of my view.</p> <p>13 Q. Did you see -- so then you could not see</p> <p>14 what, if anything, they did in response?</p> <p>15 A. Oh. Ran.</p> <p>16 Q. You did see that?</p> <p>17 A. Yes. Uh-huh.</p> <p>18 Q. Okay. Do you know if Mr. Owensby said</p> <p>19 that toward them or was saying it to someone else?</p> <p>20 A. He's saying it toward them, because he</p> <p>21 turned to them and said it, in their direction.</p> <p>22 Q. Do you know where Officer Walker was at</p> <p>23 the time?</p> <p>24 A. No.</p>	<p>1 A. On his left shoulder.</p> <p>2 Q. Were you facing him face to face or did</p> <p>3 you come up from behind?</p> <p>4 A. Walking to his right, right beside him.</p> <p>5 Q. So you put your left arm -- you're --</p> <p>6 you're to his -- his right and you put your left</p> <p>7 hand on his left shoulder?</p> <p>8 A. Yes.</p> <p>9 Q. And you say "What's up?" And he says,</p> <p>10 "What's up?" And you say, you know, You can't be</p> <p>11 doing that, or something like that, right?</p> <p>12 A. Yes.</p> <p>13 Q. And he said, What do you -- What do you</p> <p>14 mean or what. And you said, What you just did. Is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. And then you started to reach in your</p> <p>18 shirt to pull your badge out, which was hanging on a</p> <p>19 chain around your neck?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know whether or not you got the</p> <p>22 badge all the way out before Mr. Owensby started to</p> <p>23 run?</p> <p>24 A. Yes, I got it out.</p>

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1 Q. You got it all the way out?  
2 A. Yes.  
3 Q. And at that point you said he pushed off,  
4 or how -- what -- what happened then?  
5 A. He pushed off.  
6 Q. Okay.  
7 MS. GEILER: I'm sorry. What was that?  
8 THE WITNESS: Pushed off. I'm sorry.  
9 MS. GEILER: Okay.  
10 Q. And you grabbed the hood of his sweat  
11 shirt?  
12 A. Yes.  
13 Q. And it -- it ripped and he wiggled out of  
14 or got out of the sweat shirt and took off running?  
15 A. Yes.  
16 Q. What did you do with the sweat shirt?  
17 A. Dropped it.  
18 Q. After --  
19 MR. HARDIN: I'm sorry. I couldn't hear  
20 the answer.  
21 THE WITNESS: Dropped it. Let it go.  
22 Q. After the incident did you return to get  
23 the sweat shirt?  
24 A. After the incident, to the best of my

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1 knowledge, Officer Jorg recovered the sweat shirt  
2 and there was some plastic Baggies. There weren't  
3 anything in them. They were just little small  
4 plastic Baggies in that same area where the -- that  
5 actually fell out of -- fell out of his pocket or  
6 off of his person when that happened, when the sweat  
7 shirt ripped.  
8 Q. Did you see them fall out of his pocket or  
9 off of his person?  
10 A. I saw something fall, but I didn't know  
11 what it was. When I came back, it was -- you know,  
12 Officer Jorg had picked up the sweat shirt and the  
13 Baggies.  
14 Q. Were you within the eyesight of Officer  
15 Jorg at that time?  
16 A. No.  
17 Q. So he could not see what was going on?  
18 A. See what?  
19 Q. Between you and Mr. Owensby and the sweat  
20 shirt.  
21 A. No.  
22 Q. How did he know --  
23 A. I told him. I told him what happened.  
24 Q. -- to come to the area to collect the

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1 sweat shirt?  
2 A. I told him what happened and where it  
3 happened. Because after it happened I -- me  
4 personally, I went back to in between the first set  
5 of buildings where I was chasing him, because I had  
6 my cell phone while I was chasing him and it fell.  
7 I went to go find my cell phone.  
8 Q. If you know, what happened to the sweat  
9 shirt and the plastic bags?  
10 A. After that do I know what happened to  
11 them?  
12 Q. Yeah. You said Officer Jorg picked it up.  
13 A. Uh-huh.  
14 Q. What happened to it after that?  
15 A. I -- I don't know. I assumed he tagged  
16 them or whatever. I don't know. I -- I don't know  
17 what happened to them after that.  
18 Q. You've never seen them since?  
19 A. No.  
20 Q. Did you ever fill out a property receipt  
21 or -- or some property chain of custody document on  
22 it?  
23 A. Nope. I didn't -- I didn't have the  
24 property.

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1 Q. Did you see -- well, he was your partner.  
2 Did -- did you see Officer Jorg fill out a property  
3 receipt?  
4 A. No. Huh-uh.  
5 Q. Did you see him put it in the car?  
6 A. No.  
7 Q. After Mr. Owensby wiggled out of the sweat  
8 shirt, you drew your weapon?  
9 A. Yes.  
10 Q. He ran away; there was a chase down to  
11 Rhode Island where Rhode Island intersects Seymour.  
12 Do you see that on the Exhibit 57, the aerial  
13 photograph?  
14 A. Yes.  
15 Q. And would you mark with the letter R in a  
16 circle where the intersection of Rhode Island and  
17 Seymour is.  
18 A. Circle it?  
19 Q. An R in a circle.  
20 A. Okay.  
21 Q. And I take it at -- at that point, if I'm  
22 understanding you correctly, you and Mr. Owensby ran  
23 around a car?  
24 A. Yes. It was a female --

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1 Q. One -- one or two times?  
2 A. Couple times. One or -- it was either  
3 one -- I know it was one full time and it was either  
4 another half time or it may be another full time.  
5 It was a female black driver and a couple kids in  
6 the car.  
7 Because they were -- I -- I remember that  
8 just because while I'm chasing him around the car  
9 they were looking at us like we were crazy. And  
10 I -- you know, they had to be wondering what was  
11 going on.  
12 Q. At this point that you're running around  
13 the car, did you still have your weapon out?  
14 A. Yep.  
15 Q. So you still had your --  
16 A. Yeah. I mean, yes.  
17 Q. You had your -- your revolver drawn --  
18 A. Well, let me -- let me back up. When we  
19 got to the point of actually getting -- going into  
20 the street, I recovered it. Where I have to admit  
21 that I messed up was when we -- when I first  
22 initially started chasing him, I wasn't supposed to  
23 have my weapon out, running.  
24 Q. Okay. But my only question, is at -- at

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1 the intersection of Rhode Island and Seymour when  
2 you and Mr. Owensby are running around this red car,  
3 you -- did you have your --  
4 A. No, that's -- I --  
5 Q. -- your revolver out?  
6 A. I put it up. I put it up.  
7 Q. Okay.  
8 A. Because the mother and her kids and -- and  
9 seeing -- you know, that was -- it was already  
10 looking bad, you know.  
11 Q. Okay. So at that point you have holstered  
12 your -- your revolver?  
13 A. Uh-huh.  
14 Q. Is that when you take out your Mace?  
15 A. I got the Mace out after the -- okay. I  
16 was -- I managed to get my weapon secured, running  
17 around the car. And then as he went to the sidewalk  
18 to con-- you know, to go down the sidewalk, that's  
19 when I went for my Mace. And he tripped.  
20 Because he had -- he had me by a good four  
21 steps, a good three or four steps till he fell.  
22 When he fell, that's when I was able to -- I -- I  
23 thought I was going to catch up to him and be able  
24 to get him. As -- you know, but I was going for my

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1 Mace. Well, I actually got it out. And when I  
2 sprayed it, I got backlash.  
3 Q. The -- at that point where were you on the  
4 aerial photograph? Can you mark with, say, the  
5 letter M for Mace where you first deployed your  
6 Mace?  
7 A. Just past -- I -- I want to put it just  
8 past the -- that intersection. It was after he got  
9 back to the -- back on pavement on the sidewalk.  
10 Q. All right.  
11 A. Running in that direction.  
12 Q. And you marked that with a M and a circle?  
13 A. Yes.  
14 Q. Thank you. After that, then you chased  
15 him down Seymour Avenue on the sidewalk?  
16 A. We were going -- we were going down  
17 Seymour Avenue, but then he started to veer to the  
18 left in between the buildings.  
19 Q. Okay. Draw an arrow as to his path as you  
20 proceeded down Seymour and then veer off to the  
21 left.  
22 A. (Witness complies.)  
23 Q. You have an arrow?  
24 A. Yes.

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1 Q. Okay. And then circle the building that  
2 Mr. Owensby ran into.  
3 A. I'm not -- hmm. From this picture I can't  
4 really tell for sure which building it was, but it  
5 was in this vicinity. I think it was this one  
6 (indicating). This is the one I think it was. I'm  
7 not sure, I'm not all the way positive, but I think  
8 it's that one. I called out -- I know I called out  
9 the -- the address over the air, so --  
10 Q. The building number?  
11 A. The building number.  
12 Q. All right. And mark that circle with the  
13 letter B for building.  
14 A. (Witness complies.)  
15 Q. And that's where you were joined by  
16 Officer Walker?  
17 A. Yes.  
18 Q. When Mr. Owensby said, The guys or  
19 Five-oh --  
20 A. The boys.  
21 Q. The boys. I'm sorry.  
22 A. The boy -- it was The boy's, Five-oh,  
23 Police. It was -- it was clear -- I mean, how he  
24 said it and what he said, it was clear that he was

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<p style="text-align: right;">Page 86</p> <p>1 letting them know that we were there.</p> <p>2 Q. How -- how far was he from you when he</p> <p>3 said that?</p> <p>4 A. About, hmm, maybe from here to that wall</p> <p>5 (indicating).</p> <p>6 Q. What, ten feet?</p> <p>7 A. Oh, more than that.</p> <p>8 Q. More?</p> <p>9 A. Maybe --</p> <p>10 Q. 20 feet?</p> <p>11 A. Maybe. Maybe 20 feet. I don't know</p> <p>12 exactly.</p> <p>13 Q. All right. When you had walked up to Mr.</p> <p>14 Owensby, put your arm -- your left hand on his left</p> <p>15 shoulder, around him, when you were talking to him,</p> <p>16 were you looking at him?</p> <p>17 A. Directly at him, yes.</p> <p>18 Q. Did you notice if he had any facial hair?</p> <p>19 A. If he did, it was like real light. I</p> <p>20 don't remember having like a full beard or full</p> <p>21 mustache or anything.</p> <p>22 Q. Did he have the -- did he have -- how was</p> <p>23 his hair? Was it in dreadlocks, was it short-cut?</p> <p>24 How -- how was it?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Yes.</p> <p>2 Q. -- on that day?</p> <p>3 A. Yes.</p> <p>4 Q. Do you see that with respect to Jaysen</p> <p>5 Hill he is charged with criminal trespass and an</p> <p>6 open container?</p> <p>7 A. Yes.</p> <p>8 Q. Is there any reason why there's no charge</p> <p>9 of trafficking --</p> <p>10 A. Yes.</p> <p>11 Q. -- or any kind of drug activity?</p> <p>12 A. Yes.</p> <p>13 Q. Why?</p> <p>14 A. Because we didn't recover the drugs.</p> <p>15 Q. Did you recover any money, any large sums</p> <p>16 of money on these people out of these drug deals?</p> <p>17 A. I didn't.</p> <p>18 THE REPORTER: I'm sorry?</p> <p>19 THE WITNESS: I did not.</p> <p>20 Q. Do you know whether Officer Jorg did?</p> <p>21 A. Not to my knowledge he didn't.</p> <p>22 Q. So based on what you found on these</p> <p>23 individuals -- well, let's talk about the second</p> <p>24 one. Mr. Nixon is cited with criminal trespass.</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Like a short afro.</p> <p>2 Q. At that point, as I understand your</p> <p>3 testimony, you then return to Officer Jorg, tell him</p> <p>4 what happened, right?</p> <p>5 A. Uh-huh. Yes.</p> <p>6 Q. And maybe -- maybe you've already answered</p> <p>7 this, but do you recall whether or not Officer</p> <p>8 Walker joined you and Officer Jorg?</p> <p>9 A. I don't recall if he came back over there.</p> <p>10 Q. Do you recall who of the two people that</p> <p>11 were arrested, who was cited, their -- their names?</p> <p>12 A. I don't remember their names.</p> <p>13 Q. Let me show you -- let me show you what's</p> <p>14 previously been marked as Exhibit 6. These are</p> <p>15 two -- Exhibit 6 are two arrest and investigation</p> <p>16 reports. The first one is for a Jaysen Hill and the</p> <p>17 second is for a Jarvis Nixon.</p> <p>18 You see the arrest location is the Sam's</p> <p>19 Carry Out address of 2092 Seymour Avenue and the</p> <p>20 arresting officer is Jorg, with your name also</p> <p>21 listed. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Are these the two individuals that Officer</p> <p>24 Jorg arrested --</p>	<p style="text-align: right;">Page 89</p> <p>1 Same thing, there were no -- no drugs and no large</p> <p>2 sums of money found, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Based on what you found at the scene when</p> <p>5 you got there, there was no evidence of drug</p> <p>6 activity taking place, was there?</p> <p>7 A. Are you talking about after the fact?</p> <p>8 Q. When -- when you're -- based on the arrest</p> <p>9 and what you found on the person of these</p> <p>10 individuals.</p> <p>11 A. Okay. What we observed to put us there</p> <p>12 went with the two that got away.</p> <p>13 Q. Okay. That's what you believe?</p> <p>14 A. That's what I believe.</p> <p>15 Q. Let me show you what I'm going to mark as</p> <p>16 Exhibit 6A.</p> <p>17 (Deposition Exhibit 6A was marked for identi-</p> <p>18 fication.)</p> <p>19 Q. You see Exhibit 6A is an arrest and</p> <p>20 investigation report for one Dominic Peterson, same</p> <p>21 location, same date, same time. And the person is</p> <p>22 searched by Officer Walker, and this person is</p> <p>23 charged with criminal trespass. Was Mr. Peterson</p> <p>24 also involved in this?</p>

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Owensby, et al. vs. City of Cincinnati  
November 6, 2003

DAVID WILLIAM HUNTER, JR.

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1 A. No. Jorg marked all of these when he  
2 filled out the --  
3 Q. Do you recall -- do you --  
4 A. -- the arrest slips.  
5 Q. Do you recall any discussion between you  
6 and Officer Jorg as to who was going to go to court?  
7 A. No.  
8 Can I add something to this?  
9 Q. Sure.  
10 A. It's not directly related to this  
11 particular thing, but when this incident happened,  
12 after the night of November 7th, 2000, Officer Jorg  
13 and Officer Caton were going around saying, that  
14 same night, that the -- that Mr. Owensby was wanted  
15 for assault on a PO and obstructing.  
16 He ran from me. It was basically my  
17 investigation that day. That night and from there  
18 on I always said, had this tragedy not happened, the  
19 only charges I was going to place on him was  
20 obstruction and jaywalking. And the jaywalking is  
21 because he -- I chased him through a crosswalk,  
22 around a car. And obstructing is for warning the --  
23 the individuals of our presence.  
24 And that goes back to what I was telling

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1 you about different officers and officer discretion  
2 and different styles. I wouldn't have placed a  
3 criminal trespass. If, for whatever reason, I  
4 didn't get the drugs and the money to make my case,  
5 even though we set there and we observed them, we  
6 watched them, if I couldn't make it, you know, I try  
7 again another day, the next time.  
8 Same way with Mr. Owensby. He pushed me  
9 to flee. He didn't strike me or -- I didn't -- I  
10 wasn't under the impression that he was trying to  
11 harm -- or cause me harm. Therefore, I would not  
12 have charged him with felon-- with assault on a PO,  
13 with assault on a police officer. But they would  
14 have. That's the difference between this and that.  
15 That -- I'm trying to show you the --  
16 Q. Right.  
17 A. Okay.  
18 Q. Thank you.  
19 A. You're welcome.  
20 Q. Do you think -- was the push a result of  
21 you having your hand and arm around his shoulder?  
22 MR. HARDIN: Objection.  
23 A. It was when I identified myself as a  
24 police officer. And he pushed me and kept saying,

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1 "I didn't do anything, I didn't do nothing, I didn't  
2 do nothing." That's why I felt like he was just  
3 trying to basically get away. He -- he wasn't try  
4 to hurt me.  
5 Q. When you put your arm around Mr. Owensby,  
6 he didn't know that you were a police officer,  
7 right?  
8 A. No.  
9 Q. Based on your training, was that an  
10 assault on Mr. Owensby?  
11 A. No.  
12 Q. Why not?  
13 A. Because I didn't strike him, I didn't -- I  
14 didn't cause or attempt to cause or knowingly  
15 attempt to cause him any physical harm.  
16 Q. And was -- you've already indicated when  
17 Mr. Owensby tried to push away, he wasn't trying to  
18 strike you?  
19 A. No.  
20 Q. And he wasn't trying to cause you any  
21 harm?  
22 A. No.  
23 Q. When -- when you Maced Mr. Owensby and  
24 the -- the -- the blowback that you described, did

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1 you then file some sort of report about deploying  
2 your Mace?  
3 A. No.  
4 Q. I thought that earlier today you had  
5 indicated that when Mace is used, you have to --  
6 A. If you actually Mace --  
7 Q. -- the officer has to --  
8 A. Yeah, if you actually Mace somebody. I  
9 didn't get -- I didn't get to Mace him.  
10 Q. How do you know the Mace didn't get to  
11 him?  
12 A. I don't. I don't. I don't know.  
13 Q. Okay.  
14 A. You're right. You're right. I don't  
15 know. But I don't think it did, in my opinion.  
16 Q. What color was the sweat shirt, the -- the  
17 hooded sweat shirt?  
18 A. Dark color. Dark blue or black.  
19 Q. In the radio transmission or the  
20 transcript of -- well, let me show you what's  
21 previously been marked as Exhibit 7. This is a  
22 transcription of the radio traffic on September 27,  
23 2000. And what I want to direct your attention  
24 to -- are you -- are you -- first of all, are you

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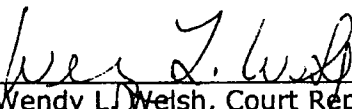


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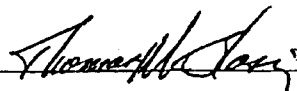
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STATE OF OHIO :  
: SS  
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public In and for the State of Ohio, do hereby state that the transcript of the deposition of DAVID WILLIAM HUNTER, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.

  
Wendy L. Welsh, Court Reporter

Sworn to before me this 27<sup>th</sup> day of January, 2004.



Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.

Estate of Roger D. Owensby, Jr.  
December 4, 2003

DAVID WILLIAM HUNTER, JR.  
VOLUME II

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## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF OHIO

## WESTERN DIVISION

-----  
ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, : Case No. 01-CV-769  
vs. : (Judge S. A. Spiegel)  
 :  
CITY OF CINCINNATI, : VOLUME II  
et al., :  
 :  
Defendants. :  
-----

Continued videotaped deposition of DAVID  
WILLIAM HUNTER JR., a witness herein, called by the  
plaintiffs for cross-examination, pursuant to the  
Federal Rules of Civil Procedure, taken before me,  
Wendy Davies Welsh, a Registered Diplomate Reporter  
and Notary Public in and for the State of Ohio, at  
the offices of Helmer, Martins & Morgan Co. LPA,  
1900 Fourth & Walnut Centre, 105 East Fourth Street,  
Cincinnati, Ohio, on Thursday, December 4, 2003, at  
10:11 a.m.

Pages: 107 - 282

Estate of Roger D. Owensby, Jr.  
December 4, 2003

DAVID WILLIAM HUNTER, JR.  
VOLUME II

<p>Page 108</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. 4 Helmer, Martins &amp; Morgan Co. LPA Suite 1900, Fourth &amp; Walnut Centre 5 105 East Fourth Street Cincinnati, Ohio 45202 6 Phone: (513) 421-2400</p> <p>7 John J. Helbling, Esq. The Helbling Law Firm, L.L.C. 8 3672 Springdale Road Cincinnati, Ohio 45251 9 Phone: (513) 923-9740</p> <p>10 On behalf of the Defendants City of Golf Manor, Stephen Tilley, Roby Heiland and Chris 11 Campbell:</p> <p>12 Wilson G. Weisenfelder Jr., Esq. Rendigs, Fry, Kiely &amp; Dennis 13 900 Fourth &amp; Vine Tower One West Fourth Street 14 Cincinnati, Ohio 45202-3688 Phone: (513) 381-9200</p> <p>15 On behalf of the Defendants City of Cincinnati, Darren Sellers, and Jason Hodge:</p> <p>16 Geri Hernandez Geiler, Esq. Assistant City Solicitor 17 Department of Law Room 214, City Hall 18 801 Plum Street Cincinnati, Ohio 45202 19 Phone: (513) 352-3346</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 110</p> <p>1 Federal Rules of Civil Procedure, may be taken at 2 this time by the notary; that said deposition may be 3 reduced to writing in stenotype by the notary, whose 4 notes may then be transcribed out of the presence of 5 the witness; and that proof of the official 6 character and qualifications of the notary is 7 expressly waived.</p> <p>8 I N D E X</p> <p>9 Examination by: Page</p> <p>10 Mr. Martins . . . . . 111, 277</p> <p>11 Mr. Hardin. . . . . 258</p> <p>12 - - -</p> <p>13 E X H I B I T S</p> <p>14 Deposition Exhibit 85 . . . . . 120</p> <p>15 Deposition Exhibit 86 . . . . . 131</p> <p>16 Deposition Exhibit 87 . . . . . 152</p> <p>17 Deposition Exhibit 88 . . . . . 219</p> <p>18 Deposition Exhibit 89 . . . . . 221</p> <p>19 Deposition Exhibit 90 . . . . . 234</p> <p>20 Deposition Exhibit 91 . . . . . 236</p> <p>21 Deposition Exhibit 92 . . . . . 238</p> <p>22 Deposition Exhibit 93 . . . . . 244</p> <p>23 Deposition Exhibit 94 . . . . . 244</p> <p>24 Deposition Exhibit 95 . . . . . 245</p> <p>Deposition Exhibit 96 . . . . . 250</p> <p>21 - - -</p> <p>22</p> <p>23</p> <p>24</p>
<p>Page 109</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellman and 3 Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus &amp; Marks, LLC 5 915 Cincinnati Club Building 30 Garfield Place 6 Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 On behalf of David William Hunter Jr.:</p> <p>8 Jay Clark, Esq. 9 114 East 8th Street Suite 400 10 Cincinnati, Ohio 45202 Phone (513) 587-2887</p> <p>11 Also present:</p> <p>12 Richard W. Grubb, Videographer</p> <p>13 Lisa Damstrom, Law Clerk 14 Helmer, Martins &amp; Morgan Co., L.P.A.</p> <p>15 Roger Owensby Senior</p> <p>16 Brenda Owensby</p> <p>17 Shawn Owensby</p> <p>18 - - -</p> <p>19 S T I P U L A T I O N S</p> <p>20</p> <p>21 It is stipulated by and among counsel for the 22 respective parties that the deposition of DAVID 23 WILLIAM HUNTER JR., a witness herein, called by the 24 plaintiffs for cross-examination, pursuant to the</p>	<p>Page 111</p> <p>1 DAVID WILLIAM HUNTER JR. 2 being by me previously duly cautioned and sworn, 3 deposes and says as follows:</p> <p>4 VIDEOGRAPHER: Time is 10:11 a.m. The 5 date is December the 4th. The year is 2003.</p> <p>6 We're on the record, sir.</p> <p>7 CONTINUED CROSS-EXAMINATION</p> <p>8 BY MR. MARTINS:</p> <p>9 Q. Officer Hunter, we're picking up where we 10 left off after November 6, your first couple hours 11 of your deposition. Remind you that you are still 12 under oath. Okay?</p> <p>13 A. Yes, sir.</p> <p>14 Q. All right. Have you talked with anyone 15 about your deposition on November 6th between 16 November 6th and today?</p> <p>17 A. No, besides my attorney.</p> <p>18 Q. Okay. Have you discussed the facts of the 19 Owensby case with anyone between November 6th and 20 today?</p> <p>21 A. No.</p> <p>22 Q. I want to direct your attention now to 23 November 7, 2000. I understand in the -- sometime 24 on that day you received an MTD message request for</p>

Estate of Roger D. Owensby, Jr.  
December 4, 2003

DAVID WILLIAM HUNTER, JR.  
VOLUME II

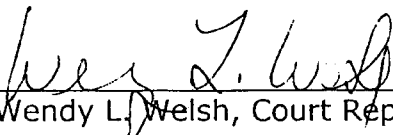
<p style="text-align: right;">Page 140</p> <p>1 said, "You can" -- he said -- he -- he said, "I 2 don't have anything on me," and he lifted his shirt. 3 And then he said, "You can pat me down." He said, 4 "I'm not -- I haven't done anything. I'm not 5 wanted. You can -- you can pat me down after you 6 run me through." 7 Q. When you told Officer Jorg and Officer 8 Hunter that, "That's him," you were standing at the 9 window -- excuse me -- did they say anything in 10 response? 11 A. You said Officer -- 12 MR. CLARK: You mean Caton? 13 A. Caton. It should have been Caton. You 14 said Officer Jorg and Officer Hunter. 15 Q. I'm sorry. I'm sorry. Officer -- when 16 you told Officer Jorg and Officer Caton that, 17 "That's him," when you were standing at the window, 18 did they say anything in response? 19 A. I don't remember if they said anything. 20 Q. You folks walk around to the front and 21 either Jorg or Caton start talking to Mr. Owensby 22 at -- at the -- the entrance; is that right? 23 A. Yes. 24 Q. Where are you at this point?</p>	<p style="text-align: right;">Page 142</p> <p>1 know whether or not he was carrying a nightstick? 2 A. I don't recall. 3 Q. A PR-24? 4 A. I don't recall if he was carrying one or 5 not. 6 Q. Do you know whether or not that night 7 Officer Jorg was carrying a collapsible PR-24 or a 8 regular full-size PR-24? 9 A. I don't remember what type he had. 10 Q. What happens next? 11 A. Officer Jorg and Officer Caton talk to Mr. 12 Owensby. They asked him questions. And then, like 13 I said, I -- I stood back, because I was still under 14 the contact-cover concept. If they both were going 15 to jump in and talk, then I just stood back as 16 cover. Because in actuality only one person should 17 have been talking. The other two should have been 18 standing back. 19 So once they were done doing their -- 20 their thing, they -- the -- the last thing one of 21 them asked, I believe it was Officer Jorg, was, 22 "Well, have you ever fought the police?" 23 Q. Fought? 24 A. Fought. Fought the police. And then Mr.</p>
<p style="text-align: right;">Page 141</p> <p>1 A. Standing just behind them. 2 Q. Bc-- 3 A. Off to the left side. 4 Q. To the left of Jorg and Caton? 5 A. Just behind them, to the -- just slightly 6 to the left. I was -- they were right in the 7 doorway, both of them, because -- that's -- the 8 reason why I can't remember who was talking, because 9 at some point they both were talking, and so I don't 10 know who says what first. 11 Q. Okay. On Exhibit 86 there, would you draw 12 a circle indicating where Jorg, Caton and Owensby 13 were and put the number 2 in it. 14 A. Just a circle where they were? 15 Q. Where they were located. 16 A. Okay. All together? Just a circle all 17 together? 18 Q. Yeah. 19 A. Because -- okay. And put a number 2? 20 Q. Yes, sir. And then a number 3 with a 21 circle, indicating where you were. 22 A. (Witness complies.) 23 Q. When Officer Jorg walked over to that 24 entrance to stop and talk to Mr. Owensby, do you</p>	<p style="text-align: right;">Page 143</p> <p>1 Owensby said no. Then, after that, that's when I 2 walked up. Well, you know, I -- not really walked 3 up, I was there, but that's when I came in the 4 doorway just, you know, where I could make eye 5 contact with Mr. Owensby. And I -- and I asked him, 6 I said, "So, have you ever ran from the police?" 7 And then when he saw that, it was a 8 reaction on his face and then that's when he broke 9 for the door. 10 THE REPORTER: I'm sorry, "broke for 11 the" -- 12 THE WITNESS: The door. 13 A. Ran toward -- I mean, he was in the 14 doorway. And then it's like he tried to run past 15 us. 16 Q. When he broke to ran -- to run, did -- did 17 he push you or assault you in any way? 18 A. No. 19 Q. As he went past you, did -- did he get 20 completely past Officer Jorg and Caton before they 21 grabbed him? 22 A. I think he did. It happened so fast, but 23 I -- I think he actually just got -- because he went 24 by so fast. And then it was like, next thing you</p>

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STATE OF OHIO :  
: SS  
COUNTY OF HAMILTON :

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Thomas M. Blasing  
Notary Public - State of Ohio

My commission expires:  
May 4, 2004.